

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:
Catherine Dunston

Case No. 08-80581
Chapter 13

Social Security No. xxx-xx-1313
Address: 56 Crystal Oaks Court, Durham, NC 27707

Debtor

MOTION TO MODIFY PLAN

NOW COMES the Debtor, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on April 17, 2008, with the Chapter 13 plan being subsequently confirmed on August 5, 2008.

2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:

From: \$1,888.00 per month.

To: \$1,888.00 per month through October, 2010, followed thereafter by \$1,888.00 per month, starting January, 2011.

3. In addition, the Debtor requests a "waiver" to move his Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. The Debtor agrees that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.

4. The changed circumstances that justify the proposed modification are as follows:

a. The debtor will temporarily be out of work in order to recover from surgery. She will be home for approximately two months. She feels that she will not be able to pay her regular expenses as well as her trustee payment.

5. An Amended Schedule I for the Debtor is attached hereto and is incorporated hereto by reference.

6. An Amended Schedule J for the Debtor is attached hereto and is incorporated hereto by reference.

7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes:

- a. Requesting Waivers.

Appended Application for an Additional Attorney Fee

8. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:

- a. Calls from and to the Debtor to discuss changes in his situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtor accordingly; and
- b. Contact with the Trustee's office concerning the proposed modification; and
- c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
- d. Drafting this Motion and Certificate of Service; and
- e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and
- f. Filing of the Motion; and
- g. Prospective attendance with Debtor at the hearing upon the motion, if any; and
- h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
- i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtor.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: October 22, 2010

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s John T. Orcutt

John T. Orcutt

North Carolina State Bar No.: 21210

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

CERTIFICATE OF SERVICE

I, Patty Cherigo, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on October 22, 2010 , I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee

Michael West
U.S. Bankruptcy Administrator

and by regular first-class U.S. mail, addressed to the following parties:

Catherine Dunston
56 Crystal Oaks Court
Durham, NC 27707

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Patty Cherigo
Patty Cherigo

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): None.	AGE(S):
Employment:	DEBTOR	SPOUSE
Occupation	Family Nurse Practitioner	
Name of Employer	Duke University	
How long employed	21 Years	
Address of Employer	Corporate Payroll Box 90484 Durham, NC 27708	
INCOME: (Estimate of average or projected monthly income at time case filed)		
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	\$ 5,981.17	\$ 0.00
2. Estimate monthly overtime	\$ 0.00	\$ 0.00
3. SUBTOTAL	\$ 5,981.17	\$ 0.00
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ 1,516.02	\$ 0.00
b. Insurance	\$ 294.33	\$ 0.00
c. Union dues	\$ 0.00	\$ 0.00
d. Other (Specify) <u>See Detailed Income Attachment</u>	\$ 653.92	\$ 0.00
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 2,464.27	\$ 0.00
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ 3,516.90	\$ 0.00
7. Regular income from operation of business or profession or farm (Attach detailed statement)	\$ 0.00	\$ 0.00
8. Income from real property	\$ 0.00	\$ 0.00
9. Interest and dividends	\$ 0.00	\$ 0.00
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ 0.00	\$ 0.00
11. Social security or government assistance (Specify):	\$ 0.00	\$ 0.00
12. Pension or retirement income	\$ 0.00	\$ 0.00
13. Other monthly income (Specify):	\$ 0.00	\$ 0.00
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ 0.00	\$ 0.00
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	\$ 3,516.90	\$ 0.00
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)	\$ 3,516.90	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:
None Anticipated

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED
Detailed Income Attachment

Other Payroll Deductions:

<u>Mandatory Monthly Parking</u>	\$ <u>50.50</u>	\$ <u>0.00</u>
<u>Mandatory Duke Card</u>	\$ <u>20.00</u>	\$ <u>0.00</u>
<u>Short-Term Disability</u>	\$ <u>19.82</u>	\$ <u>0.00</u>
<u>Gym Membership</u>	\$ <u>35.00</u>	\$ <u>0.00</u>
<u>403(b) Contribution</u>	\$ <u>500.00</u>	\$ <u>0.00</u>
<u>Long-Term Disability</u>	\$ <u>28.60</u>	\$ <u>0.00</u>
Total Other Payroll Deductions	\$ <u>653.92</u>	\$ <u>0.00</u>

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	\$ <u>0.00</u>
a. Are real estate taxes included?	Yes <u> </u> No <u> X </u>
b. Is property insurance included?	Yes <u> </u> No <u> X </u>
2. Utilities:	
a. Electricity and heating fuel	\$ <u>115.00</u>
b. Water and sewer	\$ <u>30.00</u>
c. Telephone	\$ <u>30.00</u>
d. Other <u>See Detailed Expense Attachment</u>	\$ <u>159.95</u>
3. Home maintenance (repairs and upkeep)	\$ <u>0.00</u>
4. Food	\$ <u>260.00</u>
5. Clothing	\$ <u>60.00</u>
6. Laundry and dry cleaning	\$ <u>0.00</u>
7. Medical and dental expenses	\$ <u>150.00</u>
8. Transportation (not including car payments)	\$ <u>200.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ <u>0.00</u>
10. Charitable contributions	\$ <u>40.58</u>
11. Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renter's	\$ <u>15.00</u>
b. Life	\$ <u>0.00</u>
c. Health	\$ <u>0.00</u>
d. Auto	\$ <u>81.13</u>
e. Other	\$ <u>0.00</u>
12. Taxes (not deducted from wages or included in home mortgage payments)	
(Specify) <u>Personal Property Taxes</u>	\$ <u>8.23</u>
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)	
a. Auto	\$ <u>0.00</u>
b. Other	\$ <u>0.00</u>
c. Other	\$ <u>0.00</u>
14. Alimony, maintenance, and support paid to others	\$ <u>0.00</u>
15. Payments for support of additional dependents not living at your home	\$ <u>0.00</u>
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ <u>0.00</u>
17. Other <u>See Detailed Expense Attachment</u>	\$ <u>2,078.33</u>
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	\$ <u>3,228.22</u>
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: <u>None Anticipated</u>	
20. STATEMENT OF MONTHLY NET INCOME	
a. Average monthly income from Line 15 of Schedule I	\$ <u>3,516.90</u>
b. Average monthly expenses from Line 18 above	\$ <u>3,228.22</u>
c. Monthly net income (a. minus b.)	\$ <u>288.68</u>

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED
Detailed Expense Attachment

Other Utility Expenditures:

Cablevision	\$ 50.00
Internet	\$ 39.95
Cellular Phone	\$ 70.00
Total Other Utility Expenditures	\$ 159.95

Other Expenditures:

Personal Care	\$ 30.00
Emergencies/Miscellaneous	\$ 87.00
Chapter 13 Monthly Payment	\$ 1,888.00
Monthly Storage Rental	\$ 65.00
Education as a condition of employment (12-month avg)	\$ 8.33
Total Other Expenditures	\$ 2,078.33